

10
THE
COMMONERS
LIBERTY:

OR,
THE ENGLISH-MANS
BIRTH-RIGHT.

COKE INST. 2. PAG. 56.

If any by colour of any authority (where he hath not any in that particular case) arrest or imprison any man, or cause to be arrested or imprisoned, this is against this Act, (*viz. Magna Charta, cap. 29.*) and it is most hatefull when it is done by countenance of Justice.

Ibid. pag. 56.

L. exest tutissima casus.

Ibid. pag. 161.

Dormiunt aliquando Leges, moriuntur nunquam.

LONDON,
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1659.

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...and the

THE COMMONERS LIBERTY:

O-R,

The English-man's Birth-right.

1. **T**HE Subjects of this Kingdom have ever esteemed (amongst earthly blessings) the greatest to have consisted in the due administration of Justice, and therefore have on all occasions, had recourse to their Princes for the confirmation, and right execution of their Lawes, the undoubted birth-right of every Englishman, the surest sanctuary any can take, and the strongest fortresse to protect the weakest.

2. This made *Aldred*, Arch-bishop of *Yorke* at the Coronation of the Conquerour, take a solemn Oath of him, (a) That *aquo jure Anglos, quo Francos tractaret*. And the people still call for their old customes, the Lawes of *S. Edward*, and such like, even to the granting of *Magna charta* by (b) King *John*, *qua ex parte maximâ leges antiquas & regni consuetudines continebat*. And these are those we now call the *Common Law*, which is no other then (c) the common Custome of the Realme, which is seldome at any time (d) changed or taken away without some notable damage to the people.

3. One of these ancient Customes is, That no Freeman of *England* should be tryed or proceeded against *nisi per legale judicium parium suorum*, by his Peeres, that

(a) Malf. de Pontif. in vita Aldred. fo. 154. b. 9.

(b) Mat. Par. An. 1215. pag. 254. l. 20.

(c) 2 H. 2. Accusation sur le case, 25.

(d) Coke Inst. 2. p. 210. Coke Inst. 2. p. 29.

is, his equals, such who either in respect of his *Nobility* is of the Lords House, or if he be *Commoner* of such as is capable of being of the House of Commons, at least, unless some Law have disabled him.

4. The Originall of this Custome in *England* is, for ought I know, as Ancient as any Triall in this Nation, no doubt long (e) before the Conquest, and since that

(e) See M.

Prins Plea for the Lords, p. 29

(f) Leg. H. 1.

cap. 70. cap. 87.

(f) of the Kingdom) we find them speak as an undoubted Maxime, that *Unusquisq; per pares suos judicandus est, & ejusdem Provincia*, we now say *de Vicineo peregrina vera judicia modis omnibus submovemus*, and in those times a man might challenge whom, and as many as he would.

(g) Leg. H. 1.

cap. 5.

(g) *Judices non debent esse nisi quos impetitus elegerit*: which must be understood for the tryall by Jury: for other Judges (as the chiefe Justice, &c.) he might not except against. According to this *William de Brance*,

* Mat. Par. An.

1208. p. 227.

Anno 1208. * affirmed he was ready to satisfie the King, *secundum judicium Curia sue & Baronum parium meorum*, saith he, which was before *Magna Charta*. And this Custome thus antient was at the first establishing of *Magna Charta* confirmed by expresse words in the 29th Chapter, and ever since taken as a great injurie when any hath otherwise been proceeded against. K. *John* soon after the first grant of the *Great Charter* had recourse to the Pope against the Barons, who takes notice their tryall ought to be (h) *in curia sua per pares eorum secundum leges & consuetudines regni*, (i) An. 1227. King *Hen*: the 3. urging his brother to deliver a *Mannor* of his to one *Waleran*, The Earl answered, the *Mannor* belonged to him, yet he was ready *Curia regia subire judicium & Magnatum terre*. At which the King being very angry, told him, if he persisted

(h) Epist. Innocent. 3.

apud Mat. Par. p. 266

46. a n. 1215.

(i) M. Par. An.

1227. p. 337.

At which the King being very angry, told him, if he persisted

fisted in the refusal he should leave the Kingdome, who
 with great resolution answered, he would not, *sine judi-*
cio Parium suorum. So An. 1234. one of the reasons the
 Earl Mareschall gives for his taking up of armes was,
 that the King had severall times defied him, (k) *cum* (k) M. Par. An.
semper, saith he, *paratus essem in curia, juri parere, & stare* 1234. 22. Edit.
judicio parium meorum. By all which and many more 1640.
 Examples, which for brevity I here omit, it hath ever
 been held an undoubted injury, when any hath been
 proceeded against otherwise then *per Pares*, in such cases
 as were of their cognizance.

5. Some of the grounds of reason (for avoiding all
 partiality) on which this is built, I shall hereafter touch,
 though I can adde nothing to that is so learnedly done
 by other men: Yet it will not be here amisse to shew
 that this ancient and fundamentall way of proceeding,
 hath been never in any kind altered, but to the intollera-
 ble detriment of the Subject. The cause of making the
 Statute of 3 Hen. 7. cap. 1. is said, to be for that by sever-
 rall enormities in untrue demeanings of Sheriffs in making
 of Panells, and other untrue returns, little or nothing could
 be found; but divers were almost utterly destroyed, &c.
 And therefore it doth enact, that certaine Councillors
 there named, should upon Bill or Information call before
 them the said misdoers; and examine them, and others by
 whom the truth might be knowne, and to punish such as they
 should find defective, after the forme and effect of Statutes
 thereof made, &c. Yet how intollerable a hurt in the pro-
 ceedings, Censures, Decrees of the Star-chamber were found
 to the Subject, and the meanes to introduce an Arbitrary
 power, every mans memory reacheth to; and the Act
 for abolishing it; sufficiently declares.

The 11 H. 7. cap. 3. authorized Justices of Assize, and

of the Peace upon a bare information (without any finding or presenting by verdict of twelve men) to heare and determine all offences, by colour of which *Act*, shaking
 (1) *Inst.* 2. p. 51. (saith (1) Sir Robert Coke) the Fundamentall Law, it is not credible what horrible oppressions were committed, &c. I might here remember the 31 *H. 8. cap. 8.* and the 34 *H. 8. cap. 23.* which altering that ancient and knowne tryall by Jury, were not long lived, being both repealed, the 1 *E. 3. cap. 12.* nor could the King by them work that Reformation he expected. And whereas it is objected, There must somewhere be an Arbitrary power. I grant, some must judge, whether Laws to be made are for the good government of a Common-wealth, & that is the Parliament, but not in the executing of them: For (m) *Cum leges instituta fuerint, non erit liberum arbitrium iudicare de ipsas, sed oportebit ipsum iudicare de ipsas.*
 (m) *Inst.* 4. p. 43.

6. Under this impartiall way of distributing equall justice to all men (in receiving which certaine it is reasonable the highest Duke should be leuell with the lowest beggar, and is for ought I know the chiefest Levelling aimed at) the Subjects of England have enjoyed great Peace and happynesse, ever struggling against the exercise of any arbitrary power whatsoever. But now of late when we are freed of the Star-chamber, &c. there is an opinion raised by some Grandees who are feared to aime at an Arbitrary power, to carry on their designs, that the Lords without any presentment upon Oath, or tryall by Jury, may upon a bare information, and examining of certaine Witnesses, proceed against any Commoner whatsoever, and that to deny this, or not submit unto them, is a breach of the Priviledge of the House of Peeres: And a great Lawyer of late hath writ a Tract to justify their Sentencing, Fining, and Imprisoning any Com-

Commoner, and handling all who refuse to answer to them, and by pen defend their so (n) doing, as contempters of their authority, ignorant, sottish Sectaries, illiterate *Ignoramus's*, altogether unacquainted with our Histories and Records, &c. To which I must needs say, to answer once for all) that this is not a sincere way of treating the matter in question, to make the world believe there are none but such as contemne the authority of Parliament, ignorant persons, and the like, which believe this: when I dare boldly say, of such as have studied, and understand the question, foure parts of five are of that opinion. And himselfe, pag. 45. holds their indubitable right of Judicature of Commoners to be but in extraordinary cases of *Treason, Felony, Trespass, and Misdemeanors*, tryable onely in Parliament; which, if he shall be pleased to enumerate, what they are that cannot elsewhere be tryed, I shall not much differ with him, but that the tryall of such offences might be proper for Parliament, but such I confesse I know none. And to make that a crime, which no knowne Law calls a crime, is against the Apostles definition of one, *Sinne is the Transgression of the Law*; and againe, *I had not knowne sinne but by the Law*. It is likewise against the Lawes of this Land.

(n) M. Prynne
pica for the
Lords, pag. 18,
30, 36, 45.

1 Ioh. 3. 4.

Rom. 7. 7.

7. Before I passe farther, it will not be amisse to agree upon the Question; which is not, Whether upon the Petition of the Commons, and that passing the Lords House, the King assenting to it, a Commoner may not be condemned, it being indeed then an Act of Parliament, such were those of 50 B. 3. against *Richard Lyons, William Ellis, &c.* which were confirmed by the King at *Elham*. Neither if the King and Lords (which I neither affirme, nor deny) can censure in some cases a man according to Law,

Law,

Law, doth it therefore follow the Lords alone can cause a Commoner to be fined, imprisoned, or executed? It being certaine, the King for ratifying any such thing in Parliament, must be present in his naturall capacity, of which there needs no other instance then the last I mentioned of (o) the 50 E. 3. when the King being sick, sent for the Lords and Commons to *Eltham*; which certain he had not done, had there been any other practiced way for confirming what he intended to passe (besides his owne presence) before the Statute 33 H. 8. cap. 21. which yet enacts that every law confirmed in his absence shall be both under his Seale, and signed with his hand, of which the last is certainly personall. Neither is it the Question, Whether the Lords can judge such cases as come into their House, according to the Statute 14 E. 3. c. 5. Stat. 1. or give Judgement upon a Writ of Error on a Cause legally brought thither, out of the Kings Bench.

Neither do I impugn, but that their opinion is of great Authority in point of Law; every circumstance rightly considered, before their delivering of it, of which an undoubted one I conceive to be, the knowing what the Law is, by the Judges, or other, who best understand the thing in question, for if otherwise, it is contrary to sense, to imagine a few Lords (of whom, not many are usually skilled in the Lawes, and being out of the House, are but like other men) should within those walls, as it were by inspiration, be the supream Judicature of the

(p) Inst. 3. pag.

28. 30. pag. 29.

n. 12. 13.

The 4. Febr.

27 *Elizab.*

there was onely 4. Earls,

1. Viscount, 15 Barons.

Realme. There must at the tryall of a Peere be at (p) least 12. or above, who have ever assisting them some of the Judges to advise the Lord Steward and them, what the

The 29 *Elizab.* 15 Febr. 3. Earles,

1. Viscount, 15 Barons.

Law

Law is; who coming up to the House of Peeres, may direct the Judges (who have spent much time in studying it) what the Law is. This is so clear it needs no proof, else I could shew where the opinion of the Judges not (q) taken; the Judgement of the Lords was soon made voide. And in other, where being given according to their sense, it remaines Law to this day.

(q) Rot. Parl.
15 Edw. 3. n. 42
& 50. Edw. 3.
n. 48.
Sec nu. 10.

But the Question is, whether the Lords alone, upon a bare Information, (for a Triall by Jury they use not, nor ever did, to my knowledge, without the King) can Try and Censure any Commoner to his Detriment, either in his Person or Estate.

8. First. And this, I conceive they cannot, being not certain to be *de Vicinito*.

Secondly. Because in point of Life, no Commoner can ever Try a Lord of Parliament.

Thirdly. Because the party Accused, cannot challenge any of the Lords his Tryers, &c.

Fourthly. Because it is expressly enacted, 4 Edw. 3. that they should never have any power of so doing, which, because the Act it self is not Printed, and is by some, said to be onely a *Protestation*, I will therefore, for the clearing of it, set down at large.

(r) *Concordia ne trahatur
in consequentiam.*

Et est assentu & accorde
par nostre Seignieur le Roy,
& touz les grantz en plein
Parlement, que tout soit il
que le ditz peres cōe juges
du Parlemēt empristrent en

An accord lest it should be
drawne in consequence.

It is assented, and agreed
by our Lord the King, and
all the great men in full
Parliament, that however
the said Peeres as Judges of
Parliament, did undertake

(r) Rot Parl.
die Lucia prox.
post festum sancte
Katherine.
nu. 6.

in the presence of our Lord the King to give and render the said Judgements by assent of the King upon some of those who were not their Peeres, and that by reason of the murder of our liege Lord, and destruction of him who was so neere the Blood Royall, and sonne of a King. That notwithstanding the Peeres that now are or hereafter shall be may be never held nor charged to give judgement on other then on their Peeres, neither shall the Peeres of the Land ever have power to doe it, but shall be forever discharged and quitted from the doing of it: And that the aforesaid judgments now rendred, shall not in the future be drawne into example, or consequence, for the charging the said Peeres hereafter to judge other then their Peeres against the Lawes of the Land, if the like case should happen, which God forbid.

la presence nostre Seign le Roy, a faire & a rendre les ditz jugemens par assent du Roy sur aucuns de ceux que n'estoient pas leur peres & ce par encheson de murdre de Seig. Liege, & destruction de celui que fut si pres de sank Royall & fitz du Roy que per tant les ditz peres q'ore sont, ou les peres q' seront en temps avenir ne soient mes tenuz ne charges a rendre jugements sur autre que sur leur peres ne ace faire, mes ayent les peres de la terre poer einz de ce pur touz jours soient dischargez & quites: & que les avantditz jugementz ore rendez ne soient tret en ensample n'en consequence en temps avenir pur quoy les ditz Peres puissent estre charges desore a juger autres que leur peres contre la ley de la terre, si au tiel cas aveine, que Dieu defende.

9. I professe, for my part, I cannot imagine how it is possible for any thing to be penned more fully, being a plaine Declaration, what they had done was against Law, and a provision for the future: But, because a learned Gentleman hath of late, made an artificiall Discourse to blinde the world, and take off the force of this Act of Parliament (for such it was) it will be necessary to examine what he opposeth against it.

1. *That this is no Act of Parliament, but a bare Protestation without the Kings, or Commons Assent.*

M. Prins Plea
for the Lords.
pag. 35.

And yet it is expressly said to be Assented to by our Lord the King, and all the great Ones in full Parliament: I desire to know, whether any thing can passe in full Parliament, to which the Commons are not Parties: For the being but a *bare Protestation*, the Title shewes the contrary, which calls it an *Accord*, which is, a *Compact*, an *Agreement*, not of one party that dissents from others, but of all parties concluding together what the Law is; such a Compact or Agreement is a Law.

That the House of Commons, nor the Commoners then Judged, ever demurred or excepted against the Lords Jurisdiction, &c.

That the Commons then judged, did not demurre to their Jurisdiction argued their Ignorance, but the 4 Aldermen Sir J. Maynard, M. Lilburne, & Overton, better understanding their ownright, are not to be concluded by their lachesse, and have demurred.

And yet it is plaine it was Assented unto by the King and Lords, &c. I shall desire to know of him, whether ever any Assented to that no man desired; Certainly some excepted against what was then done, themselves could not, for they agreed it should be so no more, it must therefore necessarily follow, the House of Commons, or the Parties themselves did it: and this may serve, for that he saith a little after, that this Protestation was meereley voluntary: it should seeme then the Judgement given by the

Lords was not voluntarily, the King over-ruling them. And this Protest, (if it be no more) is an exception against it somewhere.

2. The Lords; in that, do professe and justify their right of being Judges in Parliament. Which is not denied the King and them in some cases; but they doe likewise professe, that it extends not to a Commoner.

pag. 36.

3. That this was, that they might not be constrained by the Kings Command (against their wills) in his presence, to give Judgement in ordinary cases of Treason or Felony in the High Court of Parliament, against such that by Law might, and ought to be Tryed in the Kings Court at Westminster, &c. but onely in such cases which could not well be Tryed elsewhere, &c. This is in effect what he sayes.

To which I am forced to desire him to tell me, what those cases are; that now cannot well be Tryed elsewhere. And whether there are now in our Law, any such cases as the *Canonists* and *Casuits* call *casus reservati*: That cannot be Tryed by the ordinary Judicatories of the Law, but must have recourse back to the Legislative power to be ventilated there, *ex post facto*, our Law being now a better disputed, & more compleat & comprehensive Law then it was in *Edw. 3.* Raign: This I should be glad to know, from some that understand the Fountain and Reason of our Law as well as the Letter. It is certaine, that for above 200. years there is no example of proceeding against any Commoner in the House of Peers but by Act of Parliament, during which time, there was none of those cases fell out, that could not well be Tryed elsewhere, but by Judgement in the Lords House: Whatsoever is an offence,

Justice, is punishable by Law, and ought to be Try-
ed in His Majesties ordinary Courts of Justice. The
Statute of Marlebridge provides, *quod tam majores* cap. 1.
quam minores, justiciam habeant & recipiant in Curia
domini Regis: And to think, that any one House,
or both (which are not (f) a full Court without the (1) Dyar, fo. 60.
King) hath power Arbitrarily to punish one no
Member of their owne, for that the Law takes not
notice of to be a fault; I know not how well it
agrees with the rules of Justice, and how farre
distant from that so much complained of Arbitrary
Power, which I shall never think, a Court of Par-
liament will ever desire to have, or exercise, whose
jurisdiction the more high and absolute it is, the
more just and honourable ought the proceedings in
it to be, and to give example of Justice to other in-
feriour Courts, *for their being not constrained to give*
Judgements against their wills, &c. That is true, but
it is likewise, that they should never have power to
doe it, and an affirmance what they had done, was
against the Law of the Land.

4. He affirms, *this Protestation to have been made*
onely against the Lords giving Sentence in Felony and
Treason, and in the Kings owne presence, who usually pro-
nounced Sentence Himselfe, with the Lords assent, and did
not charge to give it as here He did; not against Senten-
ting, Fining, and Imprisoning any Commoner, for railing
and libelling against their Persons, Jurisdictions, and Pro-
ceedings, &c.

All this hath no colour out of the Record, or practice
of other times; and it being certain, there was then
Crime but onely *Treason* mentioned in that *Act*
or *Protestation*, as he calls it, why is it not as well

(1) Rot. Parl.
apud Lecestre,
2 H. 5. n. 16.

to bar their giving Judgement against a Commoner in other Causes, as *Felony*? which himself confesseth it reacheth to *ubi lex non distinguit, nec nos debemus distinguere*. For the Kings giving Judgement in Parliament with the Lords Assent, I doe confesse, Judgements there ought to be, properly and punctually entred as given, (1) *Par nostre Seignieur le Roy que est Souveraigne Juge en toutz cas, & par les Seigneurs spirituels & temporels avec l'assent de les comes de la terre, ou a leur petition, & nemy par les Seigneurs temporels seulement*. That is, [by our Lord the King, who is Sovereign Judge in all Causes, and by the Lords Spirituall and Temporall, with the Assent of the Commons, or at their Petition.] But it doth not follow, that if otherwise, they are invalid, it being certaine there be many Judgements generally entred as given in the Kings presence by the Lords Spirituall and Temporall, and that not held to be any cause of Exception. Compare *Rot. Parl. apud Lecest. 2. H. 5. nu. 16.* with *Parl. apud Westmin. nu. 13.* See likewise the Judgements against the Spencers, 21 R. 2. nu. *Rot Parl.*

For *Lilburnes* and *Overtons* Railing and Libelling against the Persons and Jurisdctions of the Lords; for my part I shall say nothing, having not taken upon me to defend those mens Actions, whom I neither know, nor their carriages, but their Cause, and that too, no farther then as it hath reference to the liberty of a Commoner of *England*, being judged by the Lords. Yet I cannot but say, I have heard they have been great and long sufferers, and by the English proverb, we may give *Loosers leave*

leave to speak, such being the frailty of humane nature, that *laxa patientia fit furor*. Neither are they alone involved in the case; There is a noble Knight, and four grave Aldermen, who have been Magistrates in one of the famous Cities of Europe, who all of them have put out their Protestations in Print, which he found perhaps, more difficult to confute, then to neglect.

But for their refusing to Answer, and contemning the Lords Authority to their faces at the Bar.

To this I must needs say, that for my part, I did never hear that refusing to Answer in a Court, and demurring to the excesses of any Court, was ever reputed a Contempt of the lawfull jurisdiction of that Court: we all remember, when certaine Gentlemen refused to Answer in the Star-chamber, and pleaded against the Jurisdiction of that Court, Yet neither the King nor the Lords excepted against their so doing; And in the end, their demurrer was allowed: It is no contempt to affirme a Court hath not Authority in an especiall case, that is to be determined by the Law, to which every man is to submit: And in a case of Imprisonment, without any limitation of time, certainly the Law ought be very clear that deprives a free-subject of that liberty, is so much to be prized: And if a Subject may not demurre to the Jurisdiction of any Court, every Court may enlarge it's Jurisdiction, and pretend what dormant Rules and Priviledges it pleaseth, upon all occasions, and become a faction of Tyrants over the People, they being disabled to defend themselves from such encroachments, and demurre to their Jurisdictions when they exceede their limits: A Demurrer is a Dilatory plea, not a contempt.

10. For

10. For their appealing from their Judicature in case of breach of Priviledge, of which themselves alone, and no others are, or can be Judges.

(u) pag. 26.

I answer, the thing now in Question is, whether they have a Priviledge to Judge Commoners: It is said in Master Justice (u) *Huttons* Argument, that every Prerogative of the King, contains in it self, matter of prescription, (and by consequence, is not against any established Law,) So may I say of the Priviledges of either House, that they are such as are not against any Statute Law: And that the continuall practice of all Ages hath made known to the world, but more to themselves, and therefore they are the Judges of them: But if a question be of their Priviledges, or it be doubtfull whether they can doe a thing or not. Their Judgement is not to be received, *tanquam ex tripode*, they delivering it not by Inspiration, but by Inquisition; and therefore are bound to certifie themselves by all humane means whatsoever, of the truth of every circumstance, as by hearing the Kings Learned Councell; the opinion of Judges, Presidents of former Parliaments, Practice of other Courts in the like cases, and such like.

(x) Parl. apud
Reding, 32 H. 6.
n. 27. &c.

And this was the manner of their proceedings, (x) 32 H. 6. when, though the Justices after mature deliberation had among themselves, resolved they ought not to determine the Priviledges of the High Court of Parliament; Yet the chief Justice shewed, the example of other Courts, on which they grounded their Sentence according to Law: And yet that case was in the point of their Speaker, a principall Member of the Commons, and of a difference between him and the Duke of York, one too of the House of Lords. Neither may they extend their Priviledges farther then the Law warrants; to

which purpose there is of late years a notable President,
 (y) Henry Lord Cromwell having an Attachment served on him, out of the Chancery, for not obeying an Injunction contrary to the auntient Priviledge and Immunity time out of memory to the Lords of Parliament, whereof the said Lord Cromwell prayed remedy: The Lords having examined the case in Parliament, in the presence of the Judges, and others the Queens learned Councell; and upon bearing of their opinions, it not appearing unto them that the said Attachment was warranted by the Common Law, Custome of the Realme, or by any Statute or President of the Chancery, they did order the said Lord Cromwell should be discharged from the said Attachment: Yet with this proviso, That if at any time during this Parliament, or hereafter in any other Parliament, there shall be shewed sufficient matter, That by the Queens Prerogative, or by the Common Law, or Custome of the Realme, or by any Statute Law, or sufficient President the person of any the Lords of Parliament in the like case is or ought to be attached, or is attachable, then from thenceforth, that to take place which shall be so shewed or warranted, &c. by which it is manifest the priviledges of the Lords are and must be regulated by Law, and by the opinions of the Judges and Lawyers, and the practice of other Courts are to be known before any resolution taken. And it may be farther observed, that when any of the Houses have concluded on a Priviledge without that mature care, it hath not continued; of which, for the Lords House there is a strong President, (z) 15 Ed. 3. where the Prelates, Earls, and Barons, affirming with one consent that the Peers of the land *ne deivent estre arefneꝝ in meneꝝ en jugement, si non en Parlement & par lour Peres, &c.* The Judges opposing, it lasted not long, being taken away, as the printed

(y) Journall
 of the Lords
 House, 14 El.
 June 30.

(z) Rot. Parl.
 15 Ed 3. n 7.
 n. 42.

2) Rot. Parl.
27, Ed. 3. n. 23.
27.

(b) Journal des
Comes 27 Eli:
Feb. 10, 11.

red Book shews the same year, or certainly (a) the Parliament next following: And for the House of Commons to speak of later times, that House having signified to my Lord Keeper, (b) *That by the aunsient Liberties of that House no Member of it ought to be served with a Sub pena out of Chancery*: The Lord Keeper did not onely refuse to recall his *Sub pena*, but told the Messengers sent unto him, *he should not submit to any opinion of that House touching their Priviledges, unlesse they could shew the same to have been allowed likewise in Chancery.* And of the same opinion was Egerton, 39 Eli. By all which it is evident the Law and perpetuall Custome must be the foundation of all their Priviledges.

11. Neither the Voting in one or both Houses a right of doing a thing, or the having somtimes exercised what they concluded upon, prove it justly done, or that they have by Law a Priviledge to doe it if stood upon, or that it ought to be. It is now generally held, No Member of either House can be Bayle for any before the Lords, without leave of the House, whereof they are Members:

(c) Rot. Parl.
13 Ric. 2. n. 16.
17.

(c) yet the 13 Ric. 2. the Bishops of *Lincolne* and *Norwich*, undoubtedly of the Lords House, and *John de Nevill*, and *Levell*, Members, as it seemes of the Commons, did Bayle certain persons during the sitting of the Parliament.

There is no priviledge more certain then that a Member of the House of Commons may not on any occasion be molested by Suite: Yet it is clear by the Statute (d) 23 Hen. 6. any man may be sued even before the Judges of Assize, on a supposition he was falsly returned, for that Statute limits him that shall be injured to bring his action against the person returned within three moneths: And it is certain some Parl. did then last
above

(d) 23 H. 6.
cap. 15.

above that time. And (e) the Knight of *Devon* was proceeded against in the House of Peeres, during his being of the House of Commons. But to speak of later times, who would not conclude it a certaine priviledge of the House of Commons, to have called any one of their Members out of the Lords House, and especially the *Solicitor*; they having done it both to *Onslow* and *Polpham*, the 8 and 23 *Elizabeth*. Yet attempting it * the 31 *Elizabeth*. * Journall of the Commons.
 The (f) 2 of *Rich.* the 2. the Lords affirme, though what was desired by the Commons, had been used in the three last Sessions, yet it was not the Custome of Parliament. By all which it is manifest a thing stood upon, sometimes practised and allowed, is not certainly a Priviledge of Parliament, or to have been justly done, if opposed, and this goes very farre in answering all *M. Prins Presidents*, of which more hereafter.

Lastly, saies he, *This Protestation did not foreclose the pag. 36, Lords in this, or future Parliaments to give Judgement against Commoners in other Cases of Felony and Treason, even without Commons.*

And yet the Act doth expressly say, That as they should not be charged, So they should not at all ever have power to give such Judgement; And their now doing it should not be drawn into Example for the future.

And thus I have answered all his Exceptions against this Law. Onely where he makes in so few lines two Exclamations against such as hold this a Law, and think to justifie themselves by it, of shewing their non-sence rather then reason and Law, their injudiciousnesse and folly, rather then justification, &c. I am forced to reply, a person of Integrity and Judgement, ought not with such sharpnesse raise envy against any that defend themselves by

Law. *Nonsense, Folly, and Injudiciousnesse* are words of relation, and that which seemes Nonsense to him, may be of great weight in others Judgement. But if any should make an *Appeal*, whether to affirme (with these men) this is a Law made in pursuance of the Common right of the Realm, and in affirmation of *Magna Charta* is neerer *Nonsense* then to call that a *Protestation* (which by its own nature imports some disagreeing) is in plaine words stiled an *Agreement* or nigher *Folly*, then the affirming that to have past without the Kings Concurrency, he is expressly said to have assented unto : or more *Injudicious* then to think the Commons not to have been parties to what was agreed in full Parliament, or lesse *Reason* then to say, that Law not to barre the Lords in future, which clearly provides they should never hereafter have power to judge a Commoner; I do not know, I say, (if any should thus appeal) who could be met with, would not think this Gentlemans Interpretation farther off reason, then the very letter of the Law: *Interpretari legem, est dare rationabilem intellectum sive sensum precipientis, & precepti*. Neither could he any way tearme this *raising, murmuring, or playing the Bethlehem*; thus to have his own words, retorted on him : for my part, I am confident the Gentleman would never have alleaged this Record, and many other Authorities I have met with in his workes, had he thought any would have examined the truth of his sayings, or had he any other way to weaken what must of necessity be inferred from them, but by such viperine glosses. And now it will not be unfit to see this (as it is undoubtedly a Law) how it hath been practist on all occasions, in which he is so confident there is hundreds of Presidents to the contrary of what is pretended by it, *viz.* That no man (especially claiming that

Vide pag. 66.

that right, for if otherwise they may be thought to have submitted to the Triall, *vigilantibus & non dormientibus jura subveniunt* being a Commoner ought ever to be tryed otherwise then by a Jury.

12. First, then in the same (g) Parliament of *Edw. 3.* ^{(g) Rot. Parl. 4 Edw. 3. n. 16.} Wherein this Statute or Declaration of the Law was made, Sir *Thomas Berkley*, Knight, in whose Castle *Edw. 2.* was destroyed, was questioned for the said Murther, and pleaded not guilty, and put himself upon his Country, whereupon there was a Jury summoned to appear, *Coram domino rege in Parlamento suo apud Westminster, in Octabis sancti Hillarii prox' futur.* Some two moneths after, who found him not guilty, The Record remembers all the Jurors names, and gives the reasons of their Verdict; (and this is the onely Commoner I ever read of Tryed by Jury in Parliament;) Which as it doth enough prove, the Lords cannot Try a Commoner, but that his Tryall must be by men of his own condition, *per pares*, so the never being on any occasion at any time after exercised, shewes it ought to have been there, it being certain the King cannot (as here) sit personally to Judge any, in case of *Felony* and *Treason*.

In the case of the *Genovesa*, slaine by one *Kirkby*, however the killing him, was adjudged Treason in Parliament; Yet the proceedings against him that did it, was in the Kings Bench, where *Kirkby* was Tryed by (h) a Jury, and found guilty.

(h) Rot. Parl.
3 Ric. 2. n. 18.
Term. S. Hill.

So likewise in that himself (i) alleages, 17 Ric. 2. in the case of *Thomas Talbot*, however the King and Lords adjudged the case Treason; yet for his Tryall, he was onely to render himself into the Kings Bench, there to remain till it should be ordained, *par advis du Roy & son*

3 Ric. 2. Rot. 32.
(i) Rot. Parl.
17 Ric. 2. n. 20.

conseil, how he should be further proceeded against, which was not in Parliament.

(k) Rot. Parl.
5 Hen. 4. n. 78.
& cap. 6.

In breach of Priviledge, they have not heretofore took upon them to Judge a Commoner, otherwise then to seek a Law for the punishing of him, (k) 5 Hen. 4. *Richard Cheddre*, a meniall Servant of Sir *Thomas Brook* comming to the Parliament, was wounded by one *John Sallage* or *Savage*, the Commons nor the Lords never at all goe about the punishing the said *Savage*, but petition the King would be pleased to ordein such sufficient remedy as may terrifie others, *viz.* 1. *That if any kill'd or murther'd one so comming* (as an additionall to what he was by Law to suffer) *he might lose his hand.* 2. *But if he wounded or beat any, that he should be imprisoned a year, and fined to the King.* 3. *That His Majesty would absteyne from granting any Pardon without the agreement of the Party.* But to these the King doth not consent, and allowes the offender his Tryall in the Kings Bench, as is to be seen in the printed Book.

(l) Plea for
the Lords, p. 43

The gentleman (l) cites this President, & I entreat him to peruse the Roll again, and tell me if there can be possibly one more punctuall against the Lords judging a Commoner. A servant attending a Member comming to Parliament is wounded; The Lords and Commons doe not so much as attempt to Try and Censure the doer of it; and the Judgement given, is by Act of Parliament, *lesse then what both Lords and Commons hold but sufficient*: And the Party is allowed his Tryall by Jury, in an ordinary Court of Justice.

13. The 28. Hen. 6. The Commons impeached the Duke of Suffolk who waived his Peeres, and the King gave Judgement but during the sitting of that Parliament: The Lords being assembled in the Star-chamber in

in (m) Councell, the 28 of Novemb. *Will: Talboyes* (m) Rot. Parl. Esquire, and others arrayed with *Facks, Salees, Swords* ^{23 H. 6. u. 3. 6.} and *Glaives*, in manner of Warre attempted to have slaine one of the Lords of Parliament, and of His Majesties privy Councell there Assembled; which being one of the most odious riots had been seen in the Kings time. The Commons then sitting, declare their detestation of the fact, and impeach the said *Talboyes*, and desire he may (being then imprisoned in the Tower of London) remaine there for 12 moneths, and to answer the same in His Majesties Court in presence of his Justice; but the thing desired, being not altogether according to the course of the Common-law (the Subjects undoubted birth-right) was denied by the King, and stopt; and no proceedings against him in Parliament ever thought on.

I should be tedious to repeat the Examples of *Murthers, Riots, Rapes, and other misdemeanours* complained of in Parliament; and yet the Lords not at all attempting to Judge the offenders being a Commoner, but onely to provide a faire Tryall should be had in the Kings Bench, or other ordinary Courts of Common-law against him, and sometimes by Statute, desire to increase the punishment at the Common-law, which had been vain, had it been in their power Arbitrarily to have censured the Offender. Such as would see them, may amongst others, read *Rot. Parl. 13 Rich. 2. nu. 11. 11 Hen. 4. nu. 37, 38. 11 Hen. 6. nu. 12, 43. 15 Hen. 6. nu. 13, 14, 15. 18 Hen. 6. nu. 28. 23 Hen. 6. nu. 42.* And here I thought to have ended the Presidents I have observed in this case, but that of *Cambridge* comes so fit, that though it have been touched by others, formerly, I cannot but set it down somewhat more fully.

Unto

To be transmitted over, and to have a fair Tryall in the Kings Bench: was the continuall desire of Sir *John Maynard*, the 4 Aldermen, Lieut Colonell *Lilburne*, &c.

(n) Rot. Parl.
in crastino
Anim. n. 45.

num. 57.

Rot. Parl. 13
Rich. 2. n. 14.

(n) Unto *Rich. 2.* There was a great complaint in Parliament against the Major, Bayliffs, and Cominaltee of *Cambridge*, for some compliyanee in a late commotion against the University; the Commons of that Town in their defence, by their Councell plead against the Jurisdiction of the Court, *Que ceste Court n'ent doit avoir conissance ne Jurisdiction*: The Lords moved, *affirme, if they will give no other Answer, they will proceed against them, as men that know not what to say.*

In the end a middle course is taken. The Major and Citizens submit themselves to the Kings Ordinance, touching onely their *Franchises*, by verrue of which submission, the King, by the assent of the Lords, seized the *Franchises* of the said Town: And in the end, committed to the Chancellor and Schollers, the cognizance and punishment of defaults, in the Assize of Bread, Wine and Beer, and of Flesh, Fish, &c. And the rest of all the *Franchises* bestowed on the *Major* and *Bayliffes* againe: This Ordinance gave no content to the Commonalty there, who often molested the Schollars, indicting them on true, and sometimes on feined pretences. Whereupon the Chancellor and Schollars, about 7 yeares after, framed a Petition to the Parliament against them, which was sent down to the Major and Bayliffes of *Cambridge*, commanding them to appear before the King and His Councell, the next day after *Candlemas*, with sufficient instructions and power to Answer all things, for the Cominalty there, under the Common-seal of the Town; At which time the Major and Bayliffes came into Parliament, but the Cominalty would not give them Authority to answer for them; whereupon nothing was done, of which contempt there is no question but we should have found some prosecution in that, or some follow-

following Parliament, but that not submitting the Lords knew, they had no power to Try and Judge them being Commoners.

14. And to speak seriously, If the Lords may Try a Commoner, they may Judge any mans title to his Lands, for no Law limiting the extent of their power, but that being Arbitrary, it may reach to all causes whithersoever they will stretch it, and so Westminster Hall sit quiet; And the Subject of England hath not desired an illimited power, no, nor in the two Houses, and have therefore moderated Parliaments, that they should not subvert the Lawes of the Land. See 1 Hen. 4. cap. 14. 4 Hen. 4. cap. 23. sometimes by Express words, determining that some things cannot be done in Parliaments, as that any should be impeached there, of that concerns his Franktenement or hereditament, &c. Rot. Parl. 10 Hen. 6. nu. 35. And as there is no limit of their power, so being directed by nothing but their will, either in judging what is an Offence, or punishing of it, they alone, or with the Commons, may alter the Law, for *ubi non est lex, non est transgressio*, Rom. 4. 15.

And if they can question and punish a man at their wills, for that is neither *Malum in se*, nor *Malum prohibitum*; that is, for that is no offence either by the Common or Statute Law, a man may suffer by Fine, Imprisonment, or farther, for that the Law takes no notice to be an Offence, which is contrary to *Magna Charta*, cap. 29. and a plain change of the Law, which cannot be made but by the King, and the three Estates in (o) Parliament.

15. Having thus showed the Antiquity, continuance,

D

incon-

(o) Fortescu cap. 9. fol. 25. b. Rot. Parl. 6 Hen. 6. nu. 22. The King that dead is in his life, ne might by his last will, nor otherwise alter, change, or abrogate the Law, without the consent of the three Estates, &c.

inconvenience, if otherwise of this Law, There remains onely to answer some presidents the Gentleman hath alledged, as if the Practice had beene alwayes othrewise; of all which, though I might affirme with my Lord Cooke in *Slades case*, lib. 4. fol. 94. that being never questioned, nor confirmed by Judgements given when the case was stood upon, they ought not to be regarged, yet I shall shew him, not one of them is at all to purpose; every circumstance considered. His first then is, (p) *that of John Hall, who killed the Duke of Gloucester at Calice, whose case yet he confesseth was not Tryable but in Parliament.*

(p) Plea for
the Lords, pag.
36, 37.

(q) 1 H. 4. c. 14

16. Whether the King & Lords had not cognizance of the fact of a Commoner so hainous, nor Tryable by the Common Law, as this was not, is a question I wil not now dispute, That being absolutely taken away by (q) Statute. Besides, I am not satisfied, this was not by Act of Parliament with the Commons consent, for at the end of the Roll, they thank the King for his just Judgement, who, yet never is read to have shewed it unto them, (as indeed it was not then usuall.) But I shall aske the Gentleman whether he will justifie all the proceedings in that Cause, as standing with the Common Justice of the Realme. Certainly it would be now by many thought very hard, for a person in custody to be first examined privately upon his own Oath to accuse himself, and then without being further proceeded with by Law, to have the Judgement in effect, of a Traitor, for killing a Person apparently not within the Statute of 25 Edm. 3. doubtlesse (so farre as it appears to me) this may be one of those Presidents, whereof Sir Edward (r) Cooke *ausereat oblige si potest, si non, nunquam silentium regat*; Of which opinion

(r) Cook Instit.
4. pag. 37.

opinion the Commons it seemes were, who, however they let it then passe, (he not pleading the priviledge of a Commoner) yet took care it should not be so any (f) more. And it is observable that they desire no such Accusation should be received in Parliament, but in His Majesties other Courts, *Come ad este fait & use anciennement en temps de vos tres nobles progenitors, &c.* Which affirmation is indeed, as much as is stood upon, viz. That it was not the use to try a Commoner in Parliament.

(f) Rot. Parl.
1 H. 4. n. 144.

17. His second proof, (t) 1 Hen. 4. nu. 79. *Where the Commons affirme Judgements in Parliament pertaine onely to the King and Lords, &c.* You may see the record at large in his book, pag. 37. and M. Lylburnes, called the *Lawes funerall*, pag. 16. and sets in the Margint *nota*, and pag. 38. That it is so full and punctuall a Parliamentary decision, as is uncapable of any answer or evasion.

(t) Rot. Parl.
1 H. 4. n. 79.

To this, if I should answer, that it was no Act of Parliament, and therefore bindeth not in succession, nor is now by consequence of any force; I followed no lesse Lawyer then Sir Edward Cooke, but I confesse, that passage seemes to me a Declaration of what of right, did in any Parliament belong to the Lords and Commons, and therefore to be more then temporary. I shall therefore say, that this President must extend onely to such things, which were of the cogniscance of the Parliament, and proper for that Judicature, not of things did no way at all appertain unto that Court, *Rot. Parl.* 13 Rich. 2. nu. 10. after hearing a very long case, the Record notes, *Y sembla as Seigneurs du Parlement que la dite petition n' estoit pas petition du Parlement einz que*

Cooke Instit. 4.
pag. 23.

que la matiere en ycelle compris dont este srye par la come
 ley. Certainly they seeme not to have been Judges in
 that case, nor in another Petition, *Rot. Parl.* 16 *Rich.* 2.
 nu. 32. To which the Answer is, *Suent a Roy purce que*
ceste petition n'est pas petition del Parlement, *Rot Parl.*
 10 *Hen.* 6. nu. 35. The Commons affirme matters tou-
 ching a mans Inheritance, are not examinable in Parlia-
 ment, and 32 *Hen.* 6. nu. 27. a President himself re-
 members, page 31. it is expressely said, *Actions at Com-*
mon-law be not determined in the High Court of Parlia-
ments. By all which it is manifest, those words that Judge-
 ments pertain to the King and Lords, must be under-
 stood of such things whose decision is proper and per-
 taine legally onely to the Parliament, such was that,
 27 *Hen.* 6. nu. 18. touching placing the Lords in
 Parliament, and that was given 1 *Hen.* 4. in Parliament
 against the King himself, of which the Commons
 seeme to have had no knowledge, 1 *Hen.* 4. nu. 145.
 which, when the like came again in question, *Rot. Parl.*
 39 *Hen.* 6. nu. 12. in the case of the Title of the Duke
 of York; The Lords in Parliament charge the Judges
 fully to advise touching it, who the 20 of October
 Answer; That they were the Kings Justices to de-
 termine matters in Law, between party and party; That
 this was above the Law, and passed their Learning, that
 the decision of it pertained to the Lords of the Kings blood,
 and the Peerage of the Land, and therefore they desired
 to be excused of giving Counsell in that matter; Now
 indeed in such cases I shall not deny, but the King
 and they may be Judges: Yet whatever that privi-
 ledge is, in judging, when they make a Law to binde
 the Subject, concerning any thing of that nature,

to that the Commons are parties, as well as the Lords.
 See 7 Hen. 4. cap. 2. 25 Hen. 8. cap. 22. 28 Hen. 8.
 cap. 7. 35 Hen. 8. cap. 1.

18. To his next president of 17 Rich. 2. nu. 20, 21. pag. 38.
 touching *Tho: Talbots* conspiring the death's of the
 Dukes of *Lancaster* and *Glocester*, I have Answered be-
 fore, nu. 12. That it was by the Lords onely referred to
 the Common-law.

19. His next president is that of the Earl of *Nor-* pag. 39.
thumberland, 5 Hen. 4. nu. 12. which being no Com-
 moner, is nothing to the purpose, as himself confes-
 seth, page 29. and page 41. Onely touching the Prote-
 station of the Lords, it is apparent, they then had an
 opinion, the King would have tryed him a Lord by the
 Judges, without them who were his Peeres: And for
 the Kings giving Judgement against *Henry* and *Thomas*
Percy, he well knowes there was no person then Judged,
 or brought into Judgement, onely an opinion of the
 King and Lords delivered upon a desire of the *Arch-*
bishop of Canterbury: who conceived himself and the
Duke of York in some suspicion of having adhered to
Hotspur, and the Earl of *Worcester*, whom the Earl of
Northumberland (then newly cleared by them) did free,
 from having had any compliance with them. Yet
 so as the King and Lords did affirme the warre formerly
 raised by them should be held Treason. So indeed
 judgeing no man, but delivering an opinion, that a War
 raised by two, whereof one was slaine in Fight, the
 other beheaded the next day at *Shrewesbury*, should
 be held Treason, of which there was little que-
 stion.

His next President is that of *Weston* and *Garnenai*, to pag. 41. 42.
 which

which, though I have answered before, *nu.* 15. in the case of *Hall*, their offences having been committed beyond the Seas, and therefore not Tryable by an ordinary way in *England*, and now taken away by Statute: Yet it is apparent, that Judgement was an Act of Parliament, passing at the request of the Commons, by the assent of the Lords, and stopt till the King could be informed.

pag. 42.

20. His next is, that of *Alice Perers*, against whom Judgement of Banishment, and forfeiture of Land, was given by the Lords without the King or Commons. This is the onely President that hath most colour of truth, and to his purpose in all his Book: And whether she a person that laboured then under the publique hate, for her many leud carriages, might not have somewhat acted against her, not fit to be observed at other times I cannot tell, it appearing (u) by record, the Law (on which that Judgement was grounded) (x) of the 50 *Ed.* 3. did passe without ever calling her to answer. But for my part, I doe affirme this was an act of Parliament, That the King was party to the Judgement, is (y) clear by *nu.* 43. *Et est l'intention du Roy & des Seigneurs, & ore ordeigne & assentu en mesme le Parlement, &c.* The Question then is, of the Commons, of whom there appeares nothing in the Roll; but if there be not, it doth not follow they did not assent unto it, and so made it a compleat Act. Many things doubtlesse, past formerly in Parliaments, which are not found Recorded; And some Statutes to this day Lawes, are no where enrolled, of which see Sir *Edward Cooke*, *Instit.* 4. pag. 51. But for the Commons being parties to this Judgement, it is so certaine as *Walsingham*, who then lived,

(u) Rot. Parl.

51 *Edw.* 3. n. 89

(x) Rot. Parl.

50 *Edw.* 3. r. 45

(y) Rot. Parl.

1 *Rich.* 2. n. 43.

lived, relatives, it was expressly at their pursuite. (2) *In eo Parlamento* saies he, *fuerunt p̄na omnes milites cum Petro de la Mare, &c.* — *hii itaque resumentes petitiones suas eo loco quo prius dimiserant, insisterant pro banitione illius Alicia Peres, &c.* — *que quamvis plures ex dominis & omnes legis peritos Anglia pecunia corrupisset.* — *Diligentia tamen & sapientia predictorum militum ore suo convicta proscribitur, omnibus bonis suis mobilibus & immobilibus; fisco Regio iudicatis,* which relation agreeing with the Record in every thing, but where it is more full, there can be no doubt of the truth of it, nor that this was other then an Act of Parliament.

21. The next President is of some who delivered Burbough Castle in Rich. 2. time, but this he insists not upon, as indeed it makes not to the purpose, and may receive the same answer, *Hall, Weston and Gomenis* before did.

But for Sir Thomas Mortimer and Sir John Cobham it is certaine, the Commons did not onely Impeach them, but joyned with the King and Lords in all things concerned them. Insomuch as though the Lords had Accused in that Parliament severall Lords, Yet the Commons in Parliament (a) Impeached and joyned in whatsoever was done against any Commoner; So that nothing past but by the concurrence of the King and the three Estates, which is an Act of Parliament.

22. For the Fining and Imprisoning of *Walter Sibel* of London, for (b) slandering the Earl of Oxford; that is true, but before they did so, the said *Sibel, gratia domini Regis humiliter se submitit,* and refused to prosecute

cute

cute his accusation against the *Earl*, upon whose submission this Sentence passed, as that before of *Cambridge*, nu. 13.

pag. 43.

(c) Rot. Parl.
post festum
sancti marcz.

7 Rich. 2 nu. 13

23. For that of *John Cavendish* (c) accusing *Michael de la Poole*, Chancellor of *England*, whom the Lords put over to the Judges. It is certain, if the Lords have power to Fine and Imprison a Commoner, they cannot delegate it to the Judges; nor they, who are the Kings Agents in administration of Justice, Fine any man as Deputies to them, but in doing so, must proceed after an ordinary course of Law; and therefore, either that Record of 7 Rich. 2. is imperfect, or it was done as the former, upon *Cavendish*'s submission, who did in part deny his first Accusation of the Chancellor himself, turning it onely on his Clark. And for the Lords Fining a Commoner, I am confident, there never was any one penny paid, unlesse voluntarily, of any summe so imposed by them, though perhaps they may at some time have attempted the doing it, which I doe the rather assure my self of, because the House of Peeres ha-

(d) Rot. Parl.
32 H.6. nu. 46.

(e) Cook Instit.
4. p. 3 Edw. 3.
Coro. 161.

ving an intent really to punish by (d) Fine, certain Members of their own House, for negligently attending there, (a) (e) thing certainly proper for their cogniscance, they attempted no meanes to lay so small a summe as an 100l. on an Arch-bishop, and Duke an 100 markes, on every Bishop and Earle, excepting three, and forty pounds on every Abbot and Barron, but by Act of Parliament, nor to levy it but by expressly providing in that Act, those summes should be raised on their lands, and goods by proceffe out of the Exchequer: From whence I cannot but inferre that if they would not venture (conceiving it would be stood

stood upon) the Fining a Lord for a default punishable by the Lords House, but by an Act, which expressly ~~declares~~ how it should be done by much less are they alone by Law left at large in their Censure of a Comptroller; or have any power to levy any summe they set on him...

But, where he says the Lords, in this case had witnesses examined upon Oath before them: I am not resolved, the Chancellours Clerk possessing this Lords innocency, (1) *Sur. non ferretur*, and others ex-

amined; *Sur. laur. hinc et inde* doth needs-
sarily inferre the giving an Oath, but if any think
otherwise, I will not contend. Nor more than for
his last Presidency, that the King and Lords (for so

is the (g) Record, not the Lords alone, as by him
Cited) might not commit a Commoner perhaps
for some small time, for standing a Peer. The Que-

stion is not whether they have done it, *Malis facta*
sunt qua si in iudicium vocentur fieri non debent. Be-

sides, I am not satisfied, but the King and His Coun-
cell (which none can deny the Lords to be) might
by the Statute, 12 Rich. 2. *sup.* imprison a man for
slandering a person of that estate the Arch-bishop
was; and thus I have done with all his elder Presi-
dents.

24. For those of the 18 *Jacobi* and since: I will
only say, that the course of Trying men in the
Lords House, having layen asleep (if ever practist)
for about two hundred yeares, then first renewed,
many might be ignorant of their owne right, nor
know how to plead to it. And it is certaine some

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of

(f) Rot. Parl.
17 Ric. 2. nu. 14
post. 6. h. 8.
Mans.
15 Ric. 2. nu. 21.

of these Presidents he mentions, have never been bened-
 cuted, neither were they done without Kings Conso-
 lation; in so much as all was done by unanimous Voice, if
 put in exclusion, as it was. And yet another President I have met with is, that it ap-
 pears by (h) 6 Rich. 2. cap. 1. Stat. 2. that certaine
 men were indicted, and brought in, and appeared of High
 Treason in Parliament. And therefore, that ignominious Commons may be Tried even
 for Treason in Parliament. But it is clear, there
 is no such thing can be gathered either by the Prin-
 cipal Act here spoken of, or by the Roll of either
 Parliament, or any thing else, manifest, that there
 was a Pardon given to several persons, and
 these words in the Roll, *in fine parliamenti*
in viis fully committid, must have reference to the
 pardon granted, which doth not appear in the Roll,
 nor to the Arraignment, which is nowhere found
 in it. And so it may now be expected that I speak some-
 what; If a Subject should be oppressed by an illegall
 Sentence of the Lords, how he is to be satisfied for
 not doing as he should, *Justitiam*; and for any Collu-
 sion of the Lords, Temporal exceeding their power, a-
 gainst any Statute, in the like case a Prohibition
 or Superfedeas out of the Kings Bench, lies; though
 the Statute be made, and that remedy I com-
 pare to *Articulis super Regibus* chap. 3. & 7. with the
 Register, fol. 185, 187, & 200. But this being a Supe-
 rior Court, is a greater question, in which there will
 fall out a great dispute, how farre, and in what sense
 the two Houses are, the High Court of Parliament,
 to

(h) Stat. 2.
 6 Rich. 2. cap. 1.

(i) Roll Parl.
 in Octavo
 sancti Michael.
 n. 16. et en
 tieres semper
 de quacumque
 m. 17.

which I intend not at this time to enter into, but will conclude, remembering that true advise of Master Prinne; *That who shall so suffer, shall have the comfort of a good Conscience to support him*; and God, no doubt, will in his good time finde some meanes to relieve him.

F I N I S.

E R R A T A.

Page 2. line 2. r. a *Commoner*. ibid. l. 11. r. * *Unusquisque*. & in marg. adde,
 * *Leg. H. 1. c. 31.* ibid. l. 28. r. *per partes*. p. 41. 4. r. *Sir Edward*. ibid. l. 16. dele:
ipsi & de, read, *oportebit judicare secundum ipsos* p. 111. l. penult. r. *no crime*. p. 15:
 l. 23. dele *by*. & lin. ante penult. r. *ni*. p. 18. l. 22. r. *rayling*. p. 19. l. 20. r. *ought not*.
 p. 21. l. penult. r. *hath been*. p. 22. l. 1. r. *Quinto Rich.*